

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Judge Hellerstein

-----X
IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

21 MC 100 (AKH) (ECF)

-----X
TIM FLEMING and JENNIFER FLEMING

08 CV 2506
Docket No. 1

Plaintiff(s),

-against-

THE CITY OF NEW YORK, THE PORT
AUTHORITY OF NEW YORK AND NEW
JERSEY et al.,

Defendants.
-----X

**CHECK-OFF ("SHORT
FORM") COMPLAINT
RELATED TO THE
MASTER COMPLAINT**

PLAINTIFF(S) DEMAND
TRIAL BY JURY

MAR 12 2008
U.S.D.C. S.D. N.Y.
CASHIERS

By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaints are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "X" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiffs, TIM FLEMING and JENNIFER FLEMING, by his/her/their attorneys DOUGLAS & LONDON, P.C., complaining of Defendant(s), respectfully allege:

I. PARTIES

A. PLAINTIFF(S)

1. ☒ Plaintiff, TIM FLEMING (hereinafter the "Injured Plaintiff"), is an individual and a citizen of the State of Connecticut residing at 34 Country Lane, Collinsville, Connecticut 06019.

(OR)

2. Alternatively, ☐ _____ is the _____ of Decedent _____, and brings this claim in his (her) capacity as Administrator of the Estate of _____.

3. ☒ Plaintiff, JENNIFER FLEMING (hereinafter the "Derivative Plaintiff"), is a citizen of the State of Connecticut residing at 34 Country Lane, Collinsville, Connecticut 06019, and has the following relationship to the Injured Plaintiff:

☒ SPOUSE: at all relevant times herein, is and has been lawfully married to Plaintiff TIM FLEMING, and brings this derivative action for her (his) loss due to the injuries sustained by her husband (his wife), Plaintiff TIM FLEMING

☐ Parent ☐ Child ☐ Other: _____

4. In the period from September 2001, until on or about December 2001 the Injured Plaintiff worked for Manford Brothers and Tully Construction as an Operating Engineer at:

<input checked="" type="checkbox"/> The World Trade Center Site Location(s) (i.e., building, quadrant, etc.) Based upon information known at this time, Plaintiff worked throughout the four quadrants; From on or about September 2001, until on or about December 2001; Approximately <u>14</u> hours per day; for Approximately <u>115</u> days total.	<input type="checkbox"/> The Barge From on or about _____, until _____; Approximately _____ hours per day; for Approximately _____ days total.
<input type="checkbox"/> The New York City Medical Examiner's Office From on or about _____, until _____; Approximately _____ hours per day; for Approximately _____ days total.	Other: * For injured plaintiffs who worked at Non-WTC Site building or location. The Injured Plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:
<input type="checkbox"/> The Fresh Kills Landfill From on or about _____, until _____; Approximately _____ hours per day; for Approximately _____ days total.	From on or about _____, until _____; Approximately _____ hours per day; for Approximately _____ days total. Name and Address of Non-WTC Site Building/Worksite: _____ _____

*Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

*Please read this document carefully.
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5. Injured Plaintiff

- ☒ Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;
- ☒ Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;
- ☒ Was exposed to and inhaled or absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;
- ☒ Other:
Not yet determined.

6. Injured Plaintiff

- ☒ Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. §40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was denied. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. §40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. §40101, the issue of waiver is inapplicable.
- ☐ Made a claim to the Victim Compensation Fund that was granted. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. §40101, Ground-Zero Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

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B. DEFENDANT(S)

The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

<input checked="" type="checkbox"/> THE CITY OF NEW YORK ("CITY") <input checked="" type="checkbox"/> A Notice of Claim was timely filed and served on <u>August 20, 2007</u> and <input checked="" type="checkbox"/> Pursuant to General Municipal Law §50-h the CITY held a hearing on or about <u>January 11, 2008</u> (OR) <input type="checkbox"/> The CITY has yet to hold a hearing as required by General Municipal Law §50-h <input checked="" type="checkbox"/> More than thirty days have passed and the CITY has not adjusted the claim. (OR) <input checked="" type="checkbox"/> An Order to Show Cause application to: <input checked="" type="checkbox"/> deem Plaintiff's Notice of Claim timely filed, or in the alternative to grant Plaintiffs' leave to file a late Notice of Claim <i>Nunc Pro Tunc</i> (for leave to file a late Notice of Claim <i>Nunc Pro Tunc</i> has been filed and a determination: <input type="checkbox"/> is pending <input type="checkbox"/> Granting petition was made on _____. <input checked="" type="checkbox"/> Denying petition was made on <u>November 29, 2007</u> due to the decision in <i>Felder</i> .	<input checked="" type="checkbox"/> AMEC CONSTRUCTION MANAGEMENT, INC. <input type="checkbox"/> 150 BROADWAY N.Y. ASSOCS. L.P. <input type="checkbox"/> 160 WATER ST. INC. <input type="checkbox"/> 30 BROAD STREET ASSOCIATES, LLC. <input type="checkbox"/> 7 WORLD TRADE CENTER COMPANY, L.P. <input type="checkbox"/> A RUSSO WRECKING <input type="checkbox"/> ABM INDUSTRIES, INC. <input type="checkbox"/> ABM JANITORIAL NORTHEAST, INC. <input type="checkbox"/> AMEC EARTH & ENVIRONMENTAL, INC. <input type="checkbox"/> ATLANTIC HEYDT CORP <input type="checkbox"/> BECHTEL ASSOCIATES PROFESSIONAL CORPORATION <input type="checkbox"/> BECHTEL CONSTRUCTION, INC. <input type="checkbox"/> BECHTEL CORPORATION <input type="checkbox"/> BECHTEL ENVIRONMENTAL, INC. <input type="checkbox"/> BERCHTEL ENVIRONMENTAL, INC. <input type="checkbox"/> BFP ONE LIBERTY PLAZA CO., LLC. <input type="checkbox"/> BFP TOWER C. CO. LLC. <input type="checkbox"/> BIG APPLE WRECKING & CONSTRUCTION CORP. <input type="checkbox"/> BOSTON PROPERTIES <input checked="" type="checkbox"/> BOVIS HOLDINGS LIMITED <input checked="" type="checkbox"/> BOVIS INTERNATIONAL, INC. <input checked="" type="checkbox"/> BOVIS LEND LEASE, INC. <input checked="" type="checkbox"/> BOVIS LEND LEASE INTERIORS, INC. <input checked="" type="checkbox"/> BOVIS LEND LEASE LMB, INC. <input type="checkbox"/> BRANCH SERVICES <input type="checkbox"/> BREEZE CARTING CORP. <input type="checkbox"/> BREEZE NATIONAL, INC. <input type="checkbox"/> BRER-FOUR TRANSPORATION CORP. <input type="checkbox"/> BROOKFIELD FINANCIAL PROPERTIES, INC. <input type="checkbox"/> BROWN HARRIS STEVENS, <input type="checkbox"/> BURO HAPPOLD CONSULTING ENGINEERS, P.C. <input type="checkbox"/> C&D FIREPROFFING & PLASTERING CORP. <input type="checkbox"/> C.B. CONTRACTING CORP. <input type="checkbox"/> CALEDONIAN INSURANCE COMPANY <input type="checkbox"/> CANRON CONSTRUCTION CORP <input type="checkbox"/> CANTOR SEINUK GROUP <input type="checkbox"/> CAPITAL PROPERTIES, INC. <input type="checkbox"/> CARLOS CONSTURCTION
PORT AUTHORITY OF NEW YORK AND NEW JERSEY ["PORT AUTHORITY"] <input checked="" type="checkbox"/> A Notice of Claim was filed and served pursuant to Chapter 179, §7 of The Unconsolidated Laws of the State of New York on <u>August 20, 2007</u> ; <input checked="" type="checkbox"/> More than sixty days have elapsed since the Notice of Claim was filed, (and) <input type="checkbox"/> the Port Authority has adjusted this claim. <input checked="" type="checkbox"/> the Port Authority has not adjusted this claim.	
<input type="checkbox"/> 1 WORLD TRADE CENTER, LLC <input type="checkbox"/> 1 WTC HOLDINGS, LLC <input type="checkbox"/> 2 WORLD TRADE CENTER, LLC <input type="checkbox"/> 2 WTC HOLDINGS, LLC <input type="checkbox"/> 4 WORLD TRADE CENTER, LLC <input type="checkbox"/> 4 WTC HOLDINGS, LLC <input type="checkbox"/> 5 WORLD TRADE CENTER, LLC <input type="checkbox"/> 5 WTC HOLDINGS, LLC	

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☐ CIVETTA-COUSINS, JV, LLC
☐ Clarcor Air filtration Products, Inc.
☐ COMPONENT ASSEMBLY SYSTEMS, INC.
☐ CONSOLIDATED EDISON COMMUNICATIONS HOLDING COMPANY, INC.
☐ CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
☐ CONSOLIDATED EDISON DEVELOPMENT, INC.
☐ CONSOLIDATED EDISON ENERGY, INC.
☐ CONSOLIDATED EDISON INC.
☐ CONSOLIDATED EDISON SOLUTIONS, INC.
☐ CONSULTING ENGINEERS, P.C.
☐ COOPER SQUARE REALTY, INC.
☐ COORDINATED METALS, INC.
☐ CORD CONTRACTING CO., INC.
☐ CRAIG TEST BORING COMPANY INC.
☐ CUSHMAN & WAKEFIELD, INC.
☐ DAKOTA DEMO-TECH
☐ DCM ERECTORS, INC
☐ DEUTSCHE BANK
☐ DIAMOND POINT EXCAVATING CORP
☐ DIEGO CONSTRUCTION, INC.
☐ DIVERSIFIED CARTING, INC.
☐ DMT ENTERPRISE, INC.
☐ D'ONOFRIO GENERAL CONTRACTORS CORP
☐ EAGLE LEASING & INDUSTRIAL SUPPLY
☐ EAGLE ONE ROOFING CONTRACTORS INC.
☐ EAGLE SCAFFOLDING CO
☐ EJ DAVIES, INC.
☐ EMPIRE STATE PROPERTIES, INC.
☐ EN-TECH CORP
☐ ET ENVIRONMENTAL
☐ EVERGREEN RECYCLING OF CORONA
☐ EWELL W. FINLEY, P.C.
☐ EXECUTIVE MEDICAL SERVICE, P.C.
☐ F&G MECHANICAL, INC.
☐ FLEET TRUCKING, INC.
☐ FRANCIS A. LEE COMPANY, A CORPORATION
☐ FRANCIS MICELLI JR CONTRACTING
☐ FTI TRUCKING
☐ GILSANZ MURRAY STEFICEK, LLP
☐ GLO MANAGEMENT, INC.
☐ GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC
☐ GRUBB & ELLIS MANAGEMENT SERVICES, INC.

☐ HALLEN WELDING SERVICE, INC.
☐ GC CONTRACTING CORP.
☐ HIGH-RISE ELECTRIC, INC.
☐ HIGH-RISE HOISTING AND SCAFFOLDING, INC.
☐ J.P. MORGAN CHASE CORPORATION,
☐ JEMB REALTY CORP
☐ JP EQUIPMENT RENTAL MATERIALS, INC.
☐ KIBEL COMPANIES,
☐ LAQUILA CONSTRUCTION INC.
☐ LASTRADA GENERAL CONTRACTING CORP
☐ LEFRAK ORGANIZATION INC.
☐ LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER, P.C.
☐ LIBERTY MUTUAL MANAGED CARE, INC.
☐ LOCKWOOD KESSLER & BARTLETT, INC.
☐ LUCIUS PITKIN, INC.
☐ LZA TECH-DIV OF THORTON TOMASETTI
☒ MANAFORT BROTHERS, INC.
☐ MAYORE ESTATES LLC
☐ MAZZOCHI WRECKING, INC.
☐ MEDCORE MEDICAL AND HOSPITAL SUPPLY
☐ MERIDIAN CONSTRUCTION CORP.
☐ MILFORD MANAGEMENT CORP
☐ MILSTEIN PROPERTIES CORP.
☐ MOODY'S INVESTORS SERVICE
☐ MRA ENGINEERING, P.C.
☐ MUESER RUTLEDGE CONSULTING ENGINEERS
☐ MURRAY HILL PROPERTIES
☐ NACIREMA INDUSTRIES INCORPORATED
☐ NEW YORK CRANE & EQUIPMENT CORP.
☐ NICHOLSON CONSTRUCTION COMPANY
☐ ONE WALL STREET CORPORATION
☐ OVE ARUP & PARTNERS, P.C.
☐ PETER SCALAMANDRE & SONS, INC.
☐ PINNACLE ENVIRONMENTAL CORP
☐ PLAZA CONSTRUCTION CORP.
☐ PLAZA CONSTRUCTION MANAGEMENT CORP.
☐ PRO SAFETY SERVICES, LLP
☐ PT & L CONTRACTING CORP.
☐ REGIONAL SCAFFOLD & HOISTING CO, INC.

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<input type="checkbox"/> ROBERT SILMAN ASOCIATES <input type="checkbox"/> ROBERT L. GEROSA, INC. <input type="checkbox"/> ROCKROSE DEVELOPMENT CORP. <input type="checkbox"/> ROYAL GM INC. <input type="checkbox"/> RY MANAGEMENT <input type="checkbox"/> SAB TRUCKING INC. <input type="checkbox"/> SAFEWAY ENVIRONMENTAL CORP <input type="checkbox"/> SAKELE BROTHERS, L.L.C. <input type="checkbox"/> SEASONS INDUSTRIAL CONTRACTING <input type="checkbox"/> SILVERITE CONTRACTORS <input type="checkbox"/> SILVERSTEIN PROPERTIES <input type="checkbox"/> SILVERSTEIN PROPERTIES, INC. <input type="checkbox"/> SILVERSTEIN WTC FACILITY MANAGER, LLC <input type="checkbox"/> SILVERSTEIN WTC, LLC <input type="checkbox"/> SILVERSTEIN WTC MANAGEMENT CO., LLC <input type="checkbox"/> SILVERSTEIN WTC PROPERTIES, LLC <input type="checkbox"/> SILVERSTEIN DEVELOPMENT CORP. <input type="checkbox"/> SILVERSTEIN WTC PROPERTIES LLC <input type="checkbox"/> SIMPSON GUMPERZ & HEGER INC <input type="checkbox"/> SKIDMORE OWINGS & MERRILL LLP <input type="checkbox"/> SURVIVAIR <input type="checkbox"/> THE BANK OF NEW YORK <input type="checkbox"/> THE RELATED COMPANIES, LP <input type="checkbox"/> TISHMAN INTERIORS CORPORATION <input type="checkbox"/> TISHMAN SPEYER PROPERTIES <input type="checkbox"/> TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN <input type="checkbox"/> TISHMAN CONSTRUCTION CORPORATION OF NEW YORK <input type="checkbox"/> TOMASETTI GROUP <input type="checkbox"/> TORETTA TRUCKING, INC.	<input type="checkbox"/> TOTAL SAFETY CONSULTING L.L.C. <input type="checkbox"/> TRAMMELL CROW COMPANY <input type="checkbox"/> TRINITY CENTRE, LLC <input type="checkbox"/> TRIO ASBESTOS REMOVAL <input type="checkbox"/> TUCCI EQUIPMENT RENTAL CORP <input checked="" type="checkbox"/> TULLY CONSTRUCTION CO., INC. <input checked="" type="checkbox"/> TULLY ENVIRONMENTAL INC. <input checked="" type="checkbox"/> TULLY INDUSTRIES INC. <input checked="" type="checkbox"/> TURNER CONSTRUCTION CO. <input checked="" type="checkbox"/> TURNER CONSTRUCTION COMPANY <input checked="" type="checkbox"/> TURNER CONSTRUCTION INTERNATIONAL, LLC <input checked="" type="checkbox"/> TURNER/PLAZA, A JOINT VENTURE <input type="checkbox"/> ULTIMATE DEMOLITIONS/CS HAULING <input type="checkbox"/> VERIZON NEW YORK INC. <input type="checkbox"/> VOLLMER ASSOCIATES LLP <input type="checkbox"/> W HARRIS & SONS INC. <input type="checkbox"/> WEEKS MARINE, INC. <input type="checkbox"/> WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C. <input type="checkbox"/> WFP TOWER A. CO., L.P. <input type="checkbox"/> WFP TOWER B. CO., L.P. <input type="checkbox"/> WFP TOWER D. CO., L.P. <input type="checkbox"/> WHITNEY CONTRACTING, INC. <input type="checkbox"/> WOLKOW-BRAKER ROOFING CORP <input type="checkbox"/> WORLD TRADE CENTER PROPERTIES, LLC <input type="checkbox"/> YANNUZZI & SONS INC. <input type="checkbox"/> YONKERS CONTRACTING COMPANY, INC. <input type="checkbox"/> YORK HUNTER CONSTRUCTION, LLC <input type="checkbox"/> ZAR REALTY MANAGEMETN CORP. <input type="checkbox"/> ZECKENDORF REALTY OTHER: _____
<input type="checkbox"/> Non-WTC Site Building Owner Name: _____ Business/Service Address: _____ Building/Worksite Address: _____ <input type="checkbox"/> Non-WTC Site Lessee Name: _____ Business/Service Address: _____ Building/Worksite Address: _____	<input type="checkbox"/> Non-WTC Site Building Management Agent Name: _____ Business/Service Address: _____ Building/Worksite Address: _____

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II. JURISDICTION

The Court's jurisdiction over the subject matter of this action is:

☒ Founded upon Federal Question Jurisdiction; specifically ☒ Air Transportation Safety & System Stabilization Act of 2001; (or) ☐ Federal Officers Jurisdiction, (or) ☐ Other (specify): _____; ☐ Contested, but the Court has already determined that it has removal jurisdiction over this action, pursuant to 28 U.S.C. §1441.

III. CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

<input checked="" type="checkbox"/> Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§200 and 240	<input checked="" type="checkbox"/> Common Law Negligence, including allegations of Fraud and Misrepresentation
<input checked="" type="checkbox"/> Breach of the defendants' duties and obligations pursuant to the New York State Labor Law §241(6)	<input checked="" type="checkbox"/> Air Quality; <input checked="" type="checkbox"/> Effectiveness of Mask Provided; <input type="checkbox"/> Effectiveness of Other Safety Equipment Provided (specify: _____); <input checked="" type="checkbox"/> Other (specify): <u>Not yet determined.</u>
<input type="checkbox"/> Pursuant to New York General Municipal Law §205-a	<input type="checkbox"/> Wrongful Death
<input type="checkbox"/> Pursuant to New York General Municipal Law §205-e	<input checked="" type="checkbox"/> Loss of Services/Loss of Consortium for Derivate Plaintiff
	<input type="checkbox"/> Other: _____

IV. CAUSATION, INJURY AND DAMAGE

1. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

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<input type="checkbox"/>	Cancer Injury: _____ Date of Onset: _____ Date physician first connected this injury to WTC work: _____	<input type="checkbox"/>	Cardiovascular Injury: _____ Date of Onset: _____ Date physician first connected this injury to WTC work: _____
<input checked="" type="checkbox"/>	Respiratory Injury: <u>Collapsed Lung</u> Date of Onset: <u>March 20, 2007</u> Date physician first connected this injury to WTC work: _____	<input type="checkbox"/>	Fear of Cancer: _____ Date of Onset: _____ Date physician first connected this injury to WTC work: _____
<input type="checkbox"/>	Digestive Injury: _____ Date of Onset: _____ Date physician first connected this injury to WTC work: _____	<input type="checkbox"/>	Other Injury: _____ Date of Onset: _____ Date physician first connected this injury to WTC work: _____

NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

2. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground-Zero Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

<input checked="" type="checkbox"/>	Pain and suffering	<input checked="" type="checkbox"/>	Expenses for medical care, treatment and rehabilitation
<input checked="" type="checkbox"/>	Loss of the enjoyment of life	<input checked="" type="checkbox"/>	Other:
<input checked="" type="checkbox"/>	Loss of earnings and/or impairment of earning capacity		<input checked="" type="checkbox"/> Mental Anguish
<input checked="" type="checkbox"/>	Loss of retirement benefits/diminution of retirement benefits		<input checked="" type="checkbox"/> Disability
			<input checked="" type="checkbox"/> Medical Monitoring
			<input type="checkbox"/> Other: _____

3. As a direct and proximate result of the injuries described *supra*, the derivate plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

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WHEREFORE, Plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against Defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

Plaintiff(s) demand that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York
March 10, 2008

Yours, etc.,

DOUGLAS & LONDON, P.C.

BY: 

MICHAEL A. LONDON (ML-7510)

Attorney for Plaintiffs

111 John Street, Ste 1400

New York, New York 10038

(212) 566-7500

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